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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,501	01/26/2004	David Eugene Huddleston	DEH1001	2563

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EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,501

Applicant(s)

HUDDLESTON, DAVID EUGENE

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,9,11-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,9,11-17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/29/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Information Disclosure Statement

1. The information disclosure statement filed 3/29/2004 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because most of the non patent literature documents do not include title of the article, date (the article was printed on ...), number of page (s) .

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-5, 7, 9, 11-17 and 19 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "1.a." (two places) and "1.a.," (two places), "opened.", "bag." in claim 1 and "unit.", "opening." "open." in claim 11 are incomplete and indefinite. The phrases "a drawstring" in claim 1, line 7 and "a stiff wire-like means" in claim 11, line, 8 is double recitation of line 5. Claims 12-17 and 19 depend from the canceled claim 10. In claims 7 and 17, the phrase "permits the identification card to be kept visible" is confusion and indefinite because it has no clear meaning as to how to be kept visible?

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1, 2 and 4 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lindheim (213,580) in view of Tabler (665,942). Lindheim discloses a carrier (A) comprising a suitably sized bag of flexible material formed from one or more panels of material and the bag having a flared opening when the bag is fully opened (Figure 2), a means to serve and mate as a drawstring (C, D) for closing and opening the bag (Figures 1-3). The bag of Lindheim is capable of holding a cell phone. Lindheim also discloses the other claimed limitations except for one or more handles being attached near the edge of the opening. Tabler teaches a bag (A) comprises one or more handles (23) for handling the bag. It would have been obvious to one having ordinary skill in the art in view of Tabler to modify the bag of Lindheim so the bag includes one or more handles attached near the edge of the opening for handling the bag such as for carrying the bag. The handle of the bag of Lindheim as modified is capable for using to open the bag. As to claims 2 and 4, the bag of Lindheim is capable to hold any of a variety of small electronic items as claimed.

7. Claim 3 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Kahl (2005/0072698). Lindheim as

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modified further fails to show the carrier comprises indicia. Kahl teaches a bag having a graphic indicia (Figure 4 and claim 7). It would have been obvious to one having ordinary skill in the art in view of Kahl to modify the bag of Lindheim as modified so it includes indicia for decorative purposes.

8. Claims 5 and 9 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 1 above, and further in view of Furlow et al. (4,974,709; hereinafter Furlow'709). Lindheim as modified further fails to show an attaching means being affixed to the end of the drawstring means. Furlow'709 shows a bag (10) having an attaching means (87, 89) affixed to the end of the straps (86, 88) (Figure 5) and clasping means (44) assembled onto the drawstring (Figure 4). It would have been obvious to one having ordinary skill in the art in view of Furlow'709 to modify the bag of Lindheim as modified so the end of the drawstring means includes an attaching means to facilitate attaching the bag to another object or folding the bag for storage. The bag of Lindheim as modified with the attaching means and the attaching means is capable for attaching the bag to the user's clothing such as a belt.

9. Claims 11-16 and 19 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 5 above, and further in view of Janssen (4,215,629). Lindheim further fails to show the carrier comprises a stiff wire like means in lieu of the drawstring and a clasping means being assembled onto the stiff wire-like means. Janssen teaches a bag (282) having an opening (308) and a stiff wire-like means (303) (column 7, lines 16-23) for closing the opening or to maintain the opening in an open position (Figure 7). It would have

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been obvious to one having ordinary skill in the art in view of Furlow'709 and Janssen to modify the bag of Lindheim so the drawstring comprises a stiff wire-like means as taught by Janssen to maintain the shape of the opening in an open position and to facilitate inserting and/or removing items from the bag and the bag further includes a clasping means as taught by Furlow'709 for better securing the opening. As to claim 13, see claim 3 above. As to claim 14, see claim 4 above. As to claim 15, see claim 5 above. As to claim 16, see claim 1 above. As to claim 19, see claim 9 above.

10. Claims 7 and 17 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 11 above, and further in view of Pollak et al. (3,225,806; hereinafter Pollak'806). Lindheim further fails to show the bag comprises an external holder. Pollak'806 shows the bag (20) having an external holder (23, 24) (Figure 1). It would have been obvious to one having ordinary skill in the art in view of Pollak'806 to modify the bag of Lindheim so it includes an external holder to facilitate holding an additional item such as an identification card. It would have been obvious to one having ordinary skill in the art in view of Lindheim as modified so the external holder formed from a transparent material to allow visual access to the contents within the holder since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

Applicant's arguments with respect to 12/1/2005 have been considered but are deemed to be moot in view of the new grounds of rejection.

1. The internet information sources may be permitted if applicant provides all the information as indicated above under Information Disclosure Statement section.

5. & 6. Applicant indicates that "Lindheim teaches away from the idea of the flared opening of the bag facilitating removal of items from the bag" is noted. This is not persuasive because the flared opening of Lindheim is also allowing for insertion of a user's hand into the bag to remove items from the bag which is considered equivalent to facilitating removal of items from the bag.

7. – 9. As a point of clarification, none of the rejection under 103(a) anticipate the claims of the instant invention. Lindheim and Kahl are related to a field of bag and Kahl is relied upon for nothing more than the bag comprises an indicia.

10. The flared opening as recited in claim 11 is read on the flared opening of Lindheim since there is no requirement for stretching the opening of the bag to form the flared opening as argued by Applicant.

11. The handles of Tabler are placed near the edge of the opening as indicated by the claim.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
January 11, 2006

A handwritten signature in black ink, appearing to read 'Luan K. Bui', with a long horizontal stroke extending to the right.

Luan K. Bui
Primary Examiner
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